## A BILL FOR AN ACT

RELATING TO AGRICULTURAL LANDS.

## BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF HAWAII:

1	SECT	ION 1. Chapter 205, Hawaii Revised Statutes, is
2	amended b	y adding a new section to part III to be appropriately
3	designate	d and to read as follows:
4	" <u>§20</u>	5- Permissible uses on designated important
5	agricultu	ral lands. (a) Notwithstanding any law to the
6	contrary,	lands designated as important agricultural lands
7	pursuant	to sections 205-45 and 205-49 shall be restricted to
8	the follo	wing permitted uses:
9	(1)	Cultivation of crops, including crops for bioenergy,
10		flowers, vegetation, foliage, fruits, forage, and
11		timber;
12	(2)	Game and fish propagation;
13	(3)	Raising of livestock, including poultry, bees, fish,
14	. ————————————————————————————————————	or other animal or aquatic life that are propagated
15		for economic use;
16	(4)	Farm dwellings, farm labor, or farm employee housing
17		pursuant to section 205-45.5; provided that "farm
18		dwelling", as used in this paragraph, means a single-
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1		family dwelling located on and used in connection with
2		a farm for occupancy by the operator, employees, or
3		laborers of a farming operation as defined in section
4		<u>165-2;</u>
5	<u>(5)</u>	Roadside stands for the sale of agricultural products
6		grown on the premises;
7	(6)	Buildings and uses, including mills, storage, and
8		processing facilities; maintenance facilities; vehicle
9		and equipment storage areas; irrigation water storage
10		tanks and dams; and appurtenant small buildings such
11		as booster pumping stations, that are directly
12		accessory to the uses in paragraphs (1) to (3);
13	<u>(7)</u>	Agricultural parks;
14	<u>(8)</u>	Wind energy facilities, including the appurtenances
15		associated with the production and transmission of
16		wind-generated energy; provided that the wind energy
17		facilities and appurtenances are compatible with
18		agricultural uses and cause minimal adverse impact on
19		designated important agricultural lands;
20	<u>(9)</u>	Agricultural-energy facilities, including
21		appurtenances necessary for an agricultural-energy
22		enterprise; provided that the primary activity of the

1	agricultural-energy enterprise is agricultural
2	activity. To be considered the primary activity of an
3	agricultural-energy enterprise, the total acreage
4	devoted to agricultural activity shall be not less
5	than ninety per cent of the total acreage of the
6	agricultural-energy enterprise. The agricultural-
7	energy facility shall be limited to lands owned,
8	leased, licensed, or operated by the entity conducting
9	the agricultural activity.
10	As used in this paragraph:
11	"Agricultural activity" means any activity
12	described in paragraphs (1) to (3).
13	"Agricultural-energy enterprise" means an
14	enterprise that integrally incorporates an
15	agricultural activity with an agricultural-energy
16	facility.
17	"Agricultural-energy facility" means a facility
18	that generates, stores, or distributes renewable
19	energy as defined in section 269-91 or renewable fuel
20	including electrical or thermal energy or liquid or
21	gaseous fuels from products of agricultural activities
22	from agricultural lands located in the State.

1		"Appurtenances" means operational infrastructure
2		of the appropriate type and scale for the economic
3		commercial generation, storage, distribution, and
4		other similar handling of energy, including equipment,
5		feedstock, fuels, and other products of agricultural-
6		energy facilities;
7	(10)	Agricultural education programs conducted on a farming
8		operation as defined in section 165-2, for the
9		education and participation of the general public;
10		provided that the agricultural education programs are
11		accessory and secondary to the principal agricultural
12		use of the parcels or lots on which the agricultural
13		education programs are to occur and do not interfere
14		with surrounding farm operations. For the purposes of
15		this paragraph, "agricultural education programs"
16		means activities or events designed to promote
17		knowledge and understanding of agricultural activities
18		and practices conducted on a farming operation as
19		defined in section 165-2;
20	(11)	Hunting as otherwise permitted by law; and
21	(12)	Shooting ranges as otherwise permitted by law.

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1 (b) Uses not expressly permitted in subsection (a) shall 2 be prohibited, except non-conforming uses pursuant to section 3 205-8, and construction of single-family dwellings on lots of record existing before June 4, 1976. Any other law to the 4 contrary notwithstanding, no subdivision or establishment of a 5 6 condominium property regime on designated important agricultural 7 lands shall be approved by the State or counties, or instruments 8 of conveyance recorded with the bureau of conveyances, unless 9 the designated important agricultural lands are made subject to the restriction on uses and activities as prescribed in this 10 section and to the condition that the uses and activities shall 11 12 solely be in pursuit of an agricultural business as defined in 13 subsection 235-110.93(k)." SECTION 2. Section 205-2, Hawaii Revised Statutes, is 14 amended by amending subsection (a) to read as follows: 15 "(a) There shall be four major land use districts in which 16 **17** all lands in the State shall be placed: urban, rural, agricultural, and conservation. The land use commission shall 18 group contiguous land areas suitable for inclusion in one of 19 these four major districts. The commission shall set standards 20 21 for determining the boundaries of each district, provided that:

1	(1)	In the establishment of boundaries of urban districts
2		those lands that are now in urban use and a sufficient
3		reserve area for foreseeable urban growth shall be
4		included;
5	(2)	In the establishment of boundaries for rural
6		districts, areas of land composed primarily of small
7		farms mixed with very low density residential lots,
8		which may be shown by a minimum density of not more
9		than one house per one-half acre and a minimum lot
10		size of not less than one-half acre shall be included,
11		except as herein provided;
12	(3)	In the establishment of the boundaries of agricultural
13	,	districts the greatest possible protection shall be
14		given to those lands with a high capacity for
15		intensive cultivation[; and] or lands designated as
16		important agricultural lands pursuant to this chapter;
17		and
18	(4)	In the establishment of the boundaries of conservation
19		districts, the "forest and water reserve zones"
20		provided in Act 234, section 2, Session Laws of Hawaii
21	9	1957, are renamed "conservation districts" and,
22		effective as of July 11, 1961, the boundaries of the

1	forest and water reserve zones theretofore established
2	pursuant to Act 234, section 2, Session Laws of Hawaii
3	1957, shall constitute the boundaries of the
4	conservation districts; provided that thereafter the
5	power to determine the boundaries of the conservation
6	districts shall be in the commission.
7	In establishing the boundaries of the districts in each county,
8	the commission shall give consideration to the master plan or
9	general plan of the county."
10	SECTION 3. Section 205-4.5, Hawaii Revised Statutes, is
11	amended as follows:
12	1. By amending its title to read:
13	"§205-4.5 Permissible uses on land within the agricultural
14	districts[+] not designated as important agricultural lands.
15	2. By amending subsection (a) to read:
16	"(a) Within the agricultural district, excluding
17	designated important agricultural lands, which shall be governed
18	by section 205- , all lands with soil classified by the land
19	study bureau's detailed land classification as overall (master)
20	productivity rating class A or B shall be restricted to the
21	following permitted uses:

1	(1)	Cultivation of crops, including crops for bioenergy,
2		flowers, vegetables, foliage, fruits, forage, and
3		timber;
4	(2)	Game and fish propagation;
5	(3)	Raising of livestock, including poultry, bees, fish,
6		or other animal or aquatic life that are propagated
7		for economic or personal use;
8	(4)	Farm dwellings, employee housing, farm buildings, or
9		activities or uses related to farming and animal
10		husbandry. "Farm dwelling", as used in this
11		paragraph, means a single-family dwelling located on
12		and used in connection with a farm, including clusters
13		of single-family farm dwellings permitted within
14		agricultural parks developed by the State, or where
15		agricultural activity provides income to the family
16		occupying the dwelling;
<b>17</b> .	(5)	Public institutions and buildings that are necessary
18		for agricultural practices;
19	(6)	Public and private open area types of recreational
20		uses, including day camps, picnic grounds, parks, and
21		riding stables, but not including dragstrips,

1		airports, drive-in theaters, golf courses, golf
2		driving ranges, country clubs, and overnight camps;
3	(7)	Public, private, and quasi-public utility lines and
4		roadways, transformer stations, communications
5		equipment buildings, solid waste transfer stations,
6		major water storage tanks, and appurtenant small
7		buildings such as booster pumping stations, but not
8		including offices or yards for equipment, material,
9		vehicle storage, repair or maintenance, treatment
10		plants, corporation yards, or other similar
11		structures;
12	(8)	Retention, restoration, rehabilitation, or improvement
13		of buildings or sites of historic or scenic interest;
14	(9)	Agricultural-based commercial operations as described
15		in section [+]205-2(d)(15)[+];
16	(10)	Buildings and uses, including mills, storage, and
17		processing facilities, maintenance facilities,
18		photovoltaic, biogas, and other small-scale renewable
19		energy systems producing energy solely for use in the
20		agricultural activities of the fee or leasehold owner
21		of the property, and vehicle and equipment storage
22		areas that are normally considered directly accessory

1		to t	he above-mentioned uses and are permitted under
2		sect	ion 205-2(d);
3	(11)	Agri	cultural parks;
4	(12)	Plan	tation community subdivisions, which as used in
5		this	chapter means an established subdivision or
6		clus	ter of employee housing, community buildings, and
7		agri	cultural support buildings on land currently or
8		form	erly owned, leased, or operated by a sugar or
9		pine	apple plantation; provided that the existing
10		stru	ctures may be used or rehabilitated for use, and
11		new	employee housing and agricultural support
12		buil	dings may be allowed on land within the
13		subd	livision as follows:
14		(A)	The employee housing is occupied by employees or
15			former employees of the plantation who have a
16			property interest in the land;
17		(B)	The employee housing units not owned by their
18			occupants shall be rented or leased at affordable
19			rates for agricultural workers; or
20		(C)	The agricultural support buildings shall be
21			rented or leased to agricultural business
22			operators or agricultural support services;

(T2)	Agricultural tourism conducted on a working larm, or a
	farming operation as defined in section 165-2, for the
	enjoyment, education, or involvement of visitors;
	provided that the agricultural tourism activity is
	accessory and secondary to the principal agricultural
	use and does not interfere with surrounding farm
	operations; and provided further that this paragraph
	shall apply only to a county that has adopted
	ordinances regulating agricultural tourism under
	section 205-5;
(14)	Agricultural tourism activities, including overnight
	accommodations of twenty-one days or less, for any one
	stay within a county; provided that this paragraph
	shall apply only to a county that includes at least
	three islands and has adopted ordinances regulating
	agricultural tourism activities pursuant to section
	205-5; provided further that the agricultural tourism
	activities coexist with a bona fide agricultural
	activity. For the purposes of this paragraph, "bona
	fide agricultural activity" means a farming operation

as defined in section 165-2;

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1	(13)	wind energy ractificies, including the appulcenances
2		associated with the production and transmission of
3		wind generated energy; provided that the wind energy
4		facilities and appurtenances are compatible with
5	•	agriculture uses and cause minimal adverse impact on
6		agricultural land;
7	(16)	Biofuel processing facilities, including the
8		appurtenances associated with the production and
9		refining of biofuels that is normally considered
10		directly accessory and secondary to the growing of the
11		energy feedstock; provided that biofuels processing
12		facilities and appurtenances do not adversely impact
13		agricultural land and other agricultural uses in the
14		vicinity.
15		For the purposes of this paragraph:
16		"Appurtenances" means operational infrastructure
17		of the appropriate type and scale for economic
18		commercial storage and distribution, and other similar
19		handling of feedstock, fuels, and other products of
20		biofuel processing facilities.
21		"Biofuel processing facility" means a facility
22		that produces liquid or gaseous fuels from organic

1		sources such as biomass crops, agricultural residues,
2		and oil crops, including palm, canola, soybean, and
3		waste cooking oils; grease; food wastes; and animal
4		residues and wastes that can be used to generate
5		energy;
6	(17)	Agricultural-energy facilities, including
7		appurtenances necessary for an agricultural-energy
8		enterprise; provided that the primary activity of the
9		agricultural-energy enterprise is agricultural
10		activity. To be considered the primary activity of an
11		agricultural-energy enterprise, the total acreage
12		devoted to agricultural activity shall be not less
13		than ninety per cent of the total acreage of the
14		agricultural-energy enterprise. The agricultural-
15		energy facility shall be limited to lands owned,
16		leased, licensed, or operated by the entity conducting
17		the agricultural activity.
18		As used in this paragraph:
19		"Agricultural activity" means any activity
20		described in paragraphs (1) to (3) of this subsection.
21		"Agricultural-energy enterprise" means an
22		enterprise that integrally incorporates an

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2	/	facility.
3		"Agricultural-energy facility" means a facility
4		that generates, stores, or distributes renewable
5		energy as defined in section 269-91 or renewable fuel
6		including electrical or thermal energy or liquid or
7		gaseous fuels from products of agricultural activities
8		from agricultural lands located in the State.
9		"Appurtenances" means operational infrastructure
10		of the appropriate type and scale for the economic
11		commercial generation, storage, distribution, and
12		other similar handling of energy, including equipment,
13		feedstock, fuels, and other products of agricultural-
14		energy facilities;
15	(18)	Construction and operation of wireless communication
16		antennas; provided that, for the purposes of this
17		paragraph, "wireless communication antenna" means
18		communications equipment that is either freestanding
19		or placed upon or attached to an already existing

structure and that transmits and receives

all types of wireless communications services;

electromagnetic radio signals used in the provision of

agricultural activity with an agricultural-energy

1		provided further that nothing in this paragraph shall
2		be construed to permit the construction of any new
3		structure that is not deemed a permitted use under
4		this subsection;
5	(19)	Agricultural education programs conducted on a farming
6		operation as defined in section 165-2, for the
7		education and participation of the general public;
8		provided that the agricultural education programs are
9		accessory and secondary to the principal agricultural
10		use of the parcels or lots on which the agricultural
11		education programs are to occur and do not interfere
12		with surrounding farm operations. For the purposes of
13		this [section,] paragraph, "agricultural education
14		programs" means activities or events designed to
15		promote knowledge and understanding of agricultural
16		activities and practices conducted on a farming
17		operation as defined in section 165-2;
18	(20)	Solar energy facilities that do not occupy more than
19		ten per cent of the acreage of the parcel, or twenty
20		acres of land, whichever is lesser; provided that this
21		use shall not be permitted on lands with soil
22		classified by the land study bureau's detailed land

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              classification as overall (master) productivity rating
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              class A; or
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    [f](21)[f] Geothermal resources exploration and geothermal
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              resources development, as defined under section
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              182-1."
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              By amending subsection (c) to read:
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         "(c) Within the agricultural district, excluding
    designated important agricultural lands, that shall be governed
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    by section 205- , all lands with soil classified by the land
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    study bureau's detailed land classification as overall (master)
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    productivity rating class C, D, E, or U shall be restricted to
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    the uses permitted for agricultural districts as set forth in
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    section 205-5(b)."
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              By amending subsection (f) to read:
         "[+](f)[+] Notwithstanding any other law to the contrary,
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    agricultural lands and designated important agricultural lands
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    may be subdivided and leased [for the agricultural uses or
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    activities permitted in subsection (a)]; provided that:
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              The principal use of the leased land is agriculture;
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         (1)
              No permanent or temporary dwellings or farm dwellings,
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         (2)
              including trailers and campers, are constructed on the
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22
              leased area. This restriction shall not prohibit the
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1	construction of storage sheds, equipment sheds, or
2	other structures appropriate to the agricultural
3	activity carried on within the lot; and
4	(3) The lease term for a subdivided lot shall be for at
5 -	least as long as the greater of:
6	(A) The minimum real property tax agricultural
7	dedication period of the county in which the
8	subdivided lot is located; or
9	(B) Five years.
10	Lots created and leased pursuant to this section shall be legal
11	lots of record for mortgage lending purposes and shall be exempt
12	from county subdivision standards."
13	SECTION 4. Section 205-4.6, Hawaii Revised Statutes, is
14	amended to read as follows:
15	"§205-4.6 Private restrictions on agricultural uses and
16	activities; not allowed. Agricultural uses and activities as
17	defined in sections 205-2(d) [and], 205-4.5(a), and 205- on
18	lands classified as agricultural or designated as important
19	agricultural lands shall not be restricted by any private
20	agreement contained in any deed, agreement of sale, or other
21	conveyance of land recorded in the bureau of conveyances after
22	July 8, 2003, that subject such agricultural lands to any
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- 1 servitude, including but not limited to covenants, easements, or
- 2 equitable and reciprocal negative servitudes. Any such private
- 3 restriction limiting or prohibiting agricultural use or activity
- 4 shall be voidable, subject to special restrictions enacted by
- 5 the county ordinance pursuant to section 46-4; except that
- 6 restrictions taken to protect environmental or cultural
- 7 resources, agricultural leases, utility easements, and access
- 8 easements shall not be subject to this section.
- 9 For purposes of this section, "agricultural leases" means
- 10 leases where the leased land is primarily utilized for purposes
- 11 set forth in section 205-4.5(a) [-] or 205-."
- 12 SECTION 5. Section 205-5, Hawaii Revised Statutes, is
- 13 amended to read as follows:
- 14 "S205-5 Zoning. (a) Except as herein provided, the
- 15 powers granted to counties under section 46-4 shall govern the
- 16 zoning within the districts, other than in conservation
- 17 districts. Conservation districts shall be governed by the
- 18 department of land and natural resources pursuant to chapter
- **19** 183C.
- 20 (b) Within agricultural districts, excluding designated
- 21 important agricultural lands, uses compatible to the activities
- 22 described in section 205-2 as determined by the commission shall

- 1 be permitted; provided that accessory agricultural uses and
- 2 services described in sections 205-2 and 205-4.5 may be further
- 3 defined by each county by zoning ordinance. Each county shall
- 4 adopt ordinances setting forth procedures and requirements,
- 5 including provisions for enforcement, penalties, and
- 6 administrative oversight, for the review and permitting of
- 7 agricultural tourism uses and activities as an accessory use on
- 8 a working farm, or farming operation as defined in section
- 9 165-2. Ordinances shall include but not be limited to:
- 10 (1) Requirements for access to a farm, including road
- 11 width, road surface, and parking;
- 12 (2) Requirements and restrictions for accessory facilities
- connected with the farming operation, including gift
- shops and restaurants;
- 15 (3) Activities that may be offered by the farming
- 17 (4) Days and hours of operation; and
- 18 (5) Automatic termination of the accessory use upon the
- 19 cessation of the farming operation.
- 20 Each county may require an environmental assessment under
- 21 chapter 343 as a condition to any agricultural tourism use and
- 22 activity. Other uses may be allowed by special permits issued



- 1 pursuant to this chapter. The minimum lot size in agricultural
- 2 districts shall be determined by each county by zoning
- 3 ordinance, subdivision ordinance, or other lawful means;
- 4 provided that the minimum lot size for any agricultural use
- 5 shall not be less than one acre, except as provided herein. If
- 6 the county finds that unreasonable economic hardship to the
- 7 owner or lessee of land cannot otherwise be prevented or where
- 8 land utilization is improved, the county may allow lot sizes of
- 9 less than the minimum lot size as specified by law for lots
- 10 created by a consolidation of existing lots within an
- 11 agricultural district and the resubdivision thereof; provided
- 12 that the consolidation and resubdivision do not result in an
- 13 increase in the number of lots over the number existing prior to
- 14 consolidation; and provided further that in no event shall a lot
- 15 which is equal to or exceeds the minimum lot size of one acre be
- 16 less than that minimum after the consolidation and resubdivision
- 17 action. The county may also allow lot sizes of less than the
- 18 minimum lot size as specified by law for lots created or used
- 19 for plantation community subdivisions as defined in section
- 20 205-4.5(a)(12), for public, private, and quasi-public utility
- 21 purposes, and for lots resulting from the subdivision of
- 22 abandoned roadways and railroad easements.

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         (c) Unless authorized by special permit issued pursuant to
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    this chapter, only the following uses shall be permitted within
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    rural districts:
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              Low density residential uses;
         (1)
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              Agricultural uses;
         (2)
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              Golf courses, golf driving ranges, and golf-related
         (3)
7
              facilities;
8
         (4)
              Public, quasi-public, and public utility facilities;
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              and
              Geothermal resources exploration and geothermal
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         (5)
              resources development, as defined under section 182-1.
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         In addition, the minimum lot size for any low density
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    residential use shall be one-half acre and there shall be but
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    one dwelling house per one-half acre, except as provided for in
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    section 205-2.
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         (d) Uses and activities on designated important
    agricultural lands shall be restricted to those permitted in
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    section 205- . The minimum lot size on designated important
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    agricultural lands shall be not less than ten acres, and no more
    than one farm dwelling shall be permitted per lot of record."
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         SECTION 6. Section 205-6, Hawaii Revised Statutes, is
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    amended by amending subsection (a) to read as follows:
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1 Subject to this section, the county planning "(a) 2 commission may permit certain unusual and reasonable uses within 3 agricultural and rural districts other than those for which the 4 district is classified[-]; provided that special permits shall 5 be prohibited on lands designated as important agricultural lands. Any person who desires to use the person's land within 6 7 an agricultural or rural district other than for an agricultural 8 or rural use, as the case may be, may petition the planning commission of the county within which the person's land is 9 located for permission to use the person's land in the manner 10 desired. Each county may establish the appropriate fee for 11 12 processing the special permit petition. Copies of the special permit petition shall be forwarded to the land use commission, 13 the office of planning, and the department of agriculture for 14 their review and comment." 15 SECTION 7. Section 205-8, Hawaii Revised Statutes, is 16 amended to read as follows: 17 "\$205-8 Nonconforming uses. (a) The lawful use of land 18 or buildings existing on the date of establishment of any 19 interim agricultural district and rural district in final form 20

may be continued although the use, including lot size, does not

conform to this chapter; provided that no nonconforming building

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- 1 shall be replaced, reconstructed, or enlarged or changed to
- 2 another nonconforming use and no nonconforming use of land shall
- 3 be expanded or changed to another nonconforming use. In
- 4 addition, if any nonconforming use of land or building is
- 5 discontinued or held in abeyance for a period of one year, the
- 6 further continuation of such use shall be prohibited.
- 7 (b) The lawful use of land or buildings existing on July
- 8 1, 2014, on lands designated as important agricultural lands
- 9 that do not conform to the uses in section 205- may be
- 10 continued; provided that no nonconforming use of land or
- 11 buildings shall be replaced, reconstructed, or enlarged or
- 12 changed to another nonconforming use. Any use of land or
- 13 buildings without a lawful permit\_shall be terminated within two
- 14 years of designation of the land as important agricultural land.
- 15 Lots of record on July 1, 2014, that do not conform to the
- 16 minimum lot size for lands designated as important agricultural
- 17 lands may be continued."
- 18 SECTION 8. Section 205-12, Hawaii Revised Statutes, is
- 19 amended to read as follows:
- 20 "§205-12 Enforcement. The appropriate officer or agency
- 21 charged with the administration of county zoning laws shall
- 22 enforce within each county the use classification districts

- 1 adopted by the land use commission and the [restriction]
- 2 restrictions on use and the [condition] conditions relating to
- 3 agricultural districts under section 205-4.5 and designated
- 4 important agricultural lands under section 205- and shall
- 5 report to the commission all violations."
- 6 SECTION 9. Section 205-13, Hawaii Revised Statutes, is
- 7 amended to read as follows:
- 8 "§205-13 Penalty for violation. Any person who violates
- 9 any provision under section  $205-4.5[\tau]$  or section 205- , or any
- 10 [regulation established] rule adopted relating thereto, shall be
- 11 fined not more than \$5,000, and any person who violates any
- 12 other provision of this chapter, or any [regulation established]
- 13 rule adopted relating thereto, shall be fined not more than
- 14 \$1,000.
- 15 If any person cited for a violation under this chapter
- 16 fails to remove such violation within six months of such
- 17 citation and the violation continues to exist, such person shall
- 18 be subject to a citation for a new and separate violation.
- 19 There shall be a fine of not more than \$5,000 for any additional
- 20 violation.
- 21 Prior to the issuance of any citation for a violation, the
- 22 appropriate enforcement officer or agency shall notify the

- 1 violator and the mortgagee, if any, of such violation, and the
- 2 violator or the mortgagee, if any, shall have not more than
- 3 sixty days to cure the violation before citation for a violation
- 4 is issued."
- 5 SECTION 10. This Act shall not apply to those lands that
- 6 have been designated as important agricultural lands by the land
- 7 use commission as of the effective date of this Act.
- 8 SECTION 11. Statutory material to be repealed is bracketed
- 9 and stricken. New statutory material is underscored.
- 10 SECTION 12. This Act shall take effect on July 1, 2050.

## Report Title:

Important Agricultural Lands; Permitted Uses

## Description:

Supports agriculture in the State by clarifying and specifying permitted uses on Important Agricultural Lands. Effective July 1, 2050. (HB2629 HD1)

The summary description of legislation appearing on this page is for informational purposes only and is not legislation or evidence of legislative intent.